specified sum in a Statement of Claim when claiming general damages. Particulars with figures for special damages have, of course, to be given, but for general damages the proper prayer is "The plaintiff claims damages".

There will be judgment for the plaintiff for $3,400 with costs.

Order accordingly.

Solicitors for the plaintiff: *Conaghan, Wreford & Thornton.*

Solicitor for the defendant: *Lim Cheng Ean.*

PUBLIC PROSECUTOR v. SAMINATHAN & ORS.

[A. Cr. J. (Storr, J.) June 1, 1954]

[Muar — Criminal Appeal No. 4 of 1954]

Customs Ordinance, 1952, ss. 115 & 131 — Charge of knowingly concerned in conveying uncustomed goods — Presumption that goods are uncustomed.

In this case the respondents were charged on two counts under s. 131 of the Customs Ordinance. At the trial it was submitted on behalf of the respondents that the prosecution had not proved that the goods were uncustomed goods and that the presumption under s. 115 of the Customs Ordinance did not apply in this case. The learned President of the Sessions Court agreed with this submission and acquitted the respondents. The learned Public Prosecutor appealed against the acquittal on the first charge that is of being knowingly concerned in conveying uncustomed goods.

Held: (1) once the prosecution has proved that the respondents had conscious knowledge of the possession of the goods and were charged, then as soon as they claimed trial, the presumption under s. 115 of the Customs Ordinance arose; (2) once it is proved that the duty has not been paid, there is a breach of the provisions of the Customs Ordinance and the goods *prima facie* became uncustomed goods and the respondents charged under s. 131(1)(e) of the Customs Ordinance were by s. 131(2) of the said Ordinance deemed to know that the uncustomed goods were in fact uncustomed and the onus of showing that they were not so would then be on them.

Case referred to:—

(1) *Kee Kim Chooi v. Public Prosecutor* (1952) M.L.J 180.

MAGISTRATE'S CRIMINAL APPEAL.

I. Talog Davies for the appellant.

David Marshall for the respondents.

Storr, J. : — The respondents in this appeal were originally charged with two charges under the Customs Ordinance No. 42 of 1952 as follows :—

"1. That you at about 2.50 p.m. on 23-12-53 at Parit Unas, Muar, in the State of Johore, were knowingly concerned in conveying uncustomed goods, to wit, 622 lbs. tobacco leaves, 32 packages cigars, 41 packages chewing tobacco and 8 dozen and 5 tins hair oil in van No. BB1138 with intent to defraud the Government of the duties thereon, to wit, $5,483.93 and that you have thereby committed an offence contrary to and punishable under s. 131(1)(e) of the Customs Ordinance, 1952.

2. That you at the same time and place were knowingly concerned in an attempt at fraudulent evasion of customs duty, to wit, $6,941.33, being the duty payable upon 6 bundles of tobacco leaves weighing 913½ lbs. and that you have thereby committed an offence contrary to and punishable under s. 131(1)(g) of the Customs Ordinance, 1952."

At the conclusion of the prosecution case, the learned President of the Sessions Court came to the conclusion that the prosecution had not made out a case which, if unrebutted, would warrant a conviction and he acquitted the respondents. From this acquittal on the first charge, the learned Public Prosecutor has appealed.

The facts of the case with regard to the first charge are very simple. The respondents were in a van and were stopped by Inspector Tungku Yusof and on a search being made of the van, the 'goods' mentioned in the first charge were discovered therein. All these goods, if imported into the Federation, would be liable to duty.

The learned Deputy Public Prosecutor (Mr. T. Davies) appeared for the appellant and Mr. D. S. Marshall for the respondents.

For the appellant, it was argued that the prosecution in the Court below had made out a case which, if unrebutted, would warrant a conviction, in that the prosecution had proved the three necessary ingredients of the charge. These were (1) that the respondents knowingly were in possession of the goods, subject to the charge, which were found in the van, (2) that the goods in question were uncustomed as alleged in the charge, i.e. they were imported goods on which duty had not been paid and were therefore subject to a breach of the provisions of the Customs Ordinance, 1952, and (3) that the respondents knew that the goods were uncustomed in the sense charged, i.e. that the goods were imported goods and that duty on them had not been paid.

With regard to the question of possession, there was never any question that the goods were in the possession of the respondents with their knowledge and approval.

The learned Deputy relied on the judgment of Thomson J. in *Kee Kim Chooi & Ors. v. Public Prosecutor*[1], where in referring to a somewhat similar case in relation to the harbouring of uncustomed tobacco, the learned Judge came to the conclusion that the presumption under section 99 of the Customs Enactment, 1936 (now section 115 of the Customs

Ordinance No. 42 of 1952) applied. In the course of his judgment, the learned Judge stated :—

"That section clearly applied for the prosecution was one for penalties under the Enactment and when the appellants claimed trial, as they did, the effect of their so doing was to put in dispute every material allegation in the charges against them including the allegations that the tobacco had been brought from outside Malaya, and that duty had not been paid on it. The effect of s. 99, then was that the proof of their side of these disputes was on the appellants, that is to say, they had to satisfy the court either that the tobacco had not been brought from outside Malaya or that the proper duty had been paid upon it."

With regard to the third point to be proved, the learned Judge referred to section 114(ii) of the 1936 Customs Enactment (which is practically the same as section 131(2) of the present Customs Ordinance) which read :—

"In any prosecution under this section any uncustomed goods shall be deemed to be uncustomed to the knowledge of the defendant unless the contrary be proved by such defendant."

and the learned Judge stated :

"The effect of that new sub-section clearly is that while knowledge that the goods were uncustomed remains an essential ingredient of the offence described by s. 114(1)(e), that ingredient is now in the first instance supplied by the law itself and it is for the accused person to displace it if he can."

The learned Judge then went on :—

"I pause here to emphasise a fundamental distinction between s. 99 and s. 114(ii) that may easily be overlooked. Both sections have the effect of shifting the onus of proof regarding certain facts from the prosecution on which it would otherwise lie to the accused. These facts, however, are very different. S. 99 applies to the fact that goods are customed or uncustomed whilst s. 114(ii) applies to the fact that the accused has or has not knowledge of the fact, which logically must have been already established, that the goods are uncustomed."

The learned Deputy further stated that, taking into consideration the presumption arising under sections 115 and 131(2) of the present Ordinance, the ingredients to be proved by the prosecution were proved and that a case was made out which, if unrebutted, would warrant a conviction, and that the defence of the respondents should have been called upon by the learned President.

Mr. Marshall in his reply stated that one of the ingredients of the charge that the goods were uncustomed had not been proved by the prosecution. "Uncustomed goods" were defined in section 2 of the present Ordinance as follows :—

"'Uncustomed goods' means goods in respect of which a breach of the provisions of this Ordinance or of any subsidiary legislation made thereunder has been committed."

and he stated that section 115 of the Ordinance only raises a presumption when a dispute has arisen in respect of the seven ingredients mentioned therein; in this case there was no such dispute; he could not agree with the reasoning of Thomson J. He did not think that the presumption under section 115 should arise as soon as a person is charged with being in possession of uncustomed goods, as at that time no dispute had arisen; however, if a presumption had arisen, then the evidence produced by the prosecution that some of the goods had marks and dates on them showing that, *prima facie,* they had been manufactured in Kuala Lumpur, Federation of Malaya, was sufficient to rebut such presumption.

Having considered this appeal and the grounds of judgment of the learned President of the Sessions Court, I have come to the conclusion that the learned President misdirected himself on the question of when the presumption under section 115 and section 131(2) arose.

In a case such as this, once the prosecution has proved that the respondents had conscious knowledge of the possession of the goods and were charged as this case, as soon as they claimed trial, the presumption under section 115 arose, as stated by Thomson J. in *Kee Kim Chooi & Ors. v. Public Prosecutor*[1]. It comes, therefore, to this that once it is presumed that duty has not been paid, there is a breach of the provisions of the Customs Ordinance 1952 and the goods *prima facie* become uncustomed goods, and the respondents charged under section 131(1)(e) are, by section 131(2) deemed to know that the uncustomed goods were in fact uncustomed and the onus of showing that they were not so is then on them.

I hold, therefore, that the learned President should have called on the respondents for their defence to the charge mentioned above.

The order of acquittal of the three respondents will be set aside and I order that this case be sent back to the learned President for him to call upon the respondents for their defence to the charge, the subject of this appeal.

Order accordingly.

Solicitors for the respondents : *Battenberg & Talma.*

INDO-AUSTRALIAN TRADING CO. LTD. v. HIN ANN HUAY & ORS.

[O. C. J. (Taylor, J.) June 21, 1954]

[Singapore — Suit No. 824 of 1952]

Landlord and tenant — Claim for possession — An association cannot hold tenancy in its own name.

The plaintiffs claim possession on the ground that the supposed tenancy is void. The defendant Association had obtained an assignment of the monthly tenancy with the assent of the previous landlord and had the tenancy registered in the Association's name. It was clear that